



August 16, 2002

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2002-4529

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167185.

The Texas Council on Offenders with Mental Impairments ("TCOMI") received a request for copies of "documents relating to the SB 553 Task Force." You state that you will make some responsive information available to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.106 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation" and "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation." Gov't Code § 552.106. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 (1987). Section 552.106(a) protects drafts of legislation that reflect policy judgments, recommendations, and proposals prepared by persons with some official responsibility to prepare them for the legislative body. *See* Open Records Decision No. 429 at 5 (1985). We note that the purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *See id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *See id.*

You state that the information at issue specifically relates to issues being addressed by subgroups of a task force that was established by the legislature for the purpose of reviewing methods and procedures used to evaluate a criminal defendant's competency to stand trial and utilize the insanity defense. You also state that the bill that implemented this task force requires that a report of the findings of the task force with specific recommendations for legislation be submitted to the legislature not later than December 31, 2002. Finally, you state that the information at issue concerns legislative issues being addressed by each subgroup of the task force, the direction of the task force with regard to those issues, as well as thoughts on how new legislation might be proposed to address those issues. Based on our review of your representations and this information, we agree that some of the information constitutes working papers involved in the preparation of proposed legislation that reflect policy judgments, recommendations, and proposals prepared by persons with official responsibility to prepare them for the legislature. Accordingly, we conclude that TCOMI may withhold from disclosure the information that we have marked pursuant to section 552.106 of the Government Code.

We note that the remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Accordingly, we conclude that TCOMI must withhold from disclosure the e-mail addresses that we have marked pursuant to section 552.137 of the Government Code, unless the members of the public in question have affirmatively consented to their release.

In summary, TCOMI may withhold from disclosure the information that we have marked pursuant to section 552.106 of the Government Code. TCOMI must withhold from disclosure the e-mail addresses that we have marked pursuant to section 552.137 of the Government Code, unless the members of the public in question have affirmatively consented to their release. However, TCOMI must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

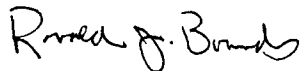
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald J. Bounds".

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 167185

Enc. Marked documents

cc: Ms. Emilie Farenthold  
P.O. Box 56461  
Houston, Texas 77256  
(w/o enclosures)